

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

FILED

MAR 28 2018

CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
YOUNGSTOWN

RYAN D. MALONE

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

Case No. 17-CV-02290-BYP

Judge: Benita Y. Pearson

1:14cr438-1

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MOTION SEEKING LEAVE TO AMEND PETITIONER'S SECTION 2255 PETITION  
PURSUANT TO Fed. R. Civ. P. 15(c)(1)(A) OR ALTERNATIVELY  
TO ADD A SUPPLEMENTAL PLEADING UNDER RULE 15(d)

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Now Comes the petitioner, RYAN D. MALONE, pro-se, and respectfully ask this honorable court to allow him to either Amend his original § 2255 petition to add an additional issue pursuant to either Fed. R. Civ. P. 15(c)(1)(A), or Fed. R. Civ. P. 15(d). The reason that support this request are as follows.

As an initial matter, petitioner must state that he is not attempting to replace any argument that he originally made in his § 2255 motion. Petitioner is only attempting to add an additional issue that relates directly to a sentencing error that happened as a result of petitioner being resentenced on November 15th, 2016. Because petitioner is not an attorney, he is not sure if this issues fits correctly under Rule 15(c) or 15(d). But petitioner ask that this pleading be construde liberally (see Pilgrim v. Littlefield, 92 F.3d 413, 416 (6th Cir. 1996)), and read "to raise the strongest argument that they suggest." See Brownell v. Krom, 446 F.3d 305, 310 (2nd Cir. 2006).

1. Federal Rule of Civil Procedure 15(c)(1)(A) allows a petitioner to file an amendment that "relates back to the date of the original pleading when: (A) the law that provides the applicable statute of limitations allows relation back." In this case, petitioner's case did not become final until September 12, 2017, the date of the decision on petitioner appeal. See United States v. Malone, 2017 U.S. App. LEXIS 22584 (6th Cir. 2017). Therefore, this amendment is timely and can be considered as relating back to the original petition as an addition to. and not a replacement of, any argument made therein.

In the event that this motion is not proper under any of the rules above, I request that this court hear this motion under Fed. R. Civ. P. 15(d) as a Supplemental pleading, And, grant any additional relief that this court deems just and proper.

Respectfully Submitted:

Ryan D. Malone

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C E R T I F I C A T E   O F   S E R V I C E

I certify that I have placed a copy of this Motion in the institutional Legal Mail, for delivery by the United States Postal Service to the United States District Court for the Northern District of Ohio, in a sealed envelope, with postage pre-paid, and an addition copy was sent to all parties whose names and addresses appear below, on this 26, day of March, 2018.

Elliot Morrison

Assistant U.S. Attorney

United States Courthouse

801 West Superior Ave, Suite 400

Cleveland, Ohio 44113

Ryan D. Malone

Ryan D. Malone, pro-se